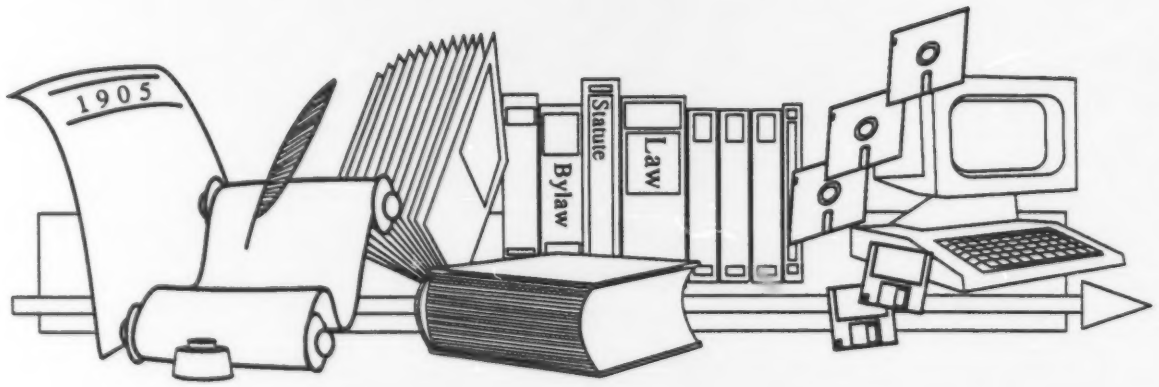
Special Issue Paper

"Disqualification: Family Violence Offences"

Response Deadline: October 15, 1991



Alberta

Municipal Statutes Review Committee

91-06891/

BACKGROUND

When a councillor in the capitol area entered a guilty plea and was convicted of assault against the councillor's estranged spouse, there was a flurry of calls for the councillor's resignation or disqualification. The conviction was under Section 266 of the Criminal Code, was punishable by less than five years imprisonment and, therefore, under the provisions of both the existing Municipal Government Act and the new Municipal Government Act proposed by the Municipal Statutes Review Committee, the councillor was not disqualified.

Section 29, Municipal Government Act reads in part:

> "29(1) A person who
>
> > (d) is convicted of an indictable offence punishable by imprisonment for 5 or more years ...
>
> is disqualified from remaining a member of a council."

Section 118(1)(d) of the proposed Municipal Government Act contains a similar provision.

When it became known that disqualification would not follow the conviction, requests were made to amend the Municipal Government Act. The Minister of Municipal Affairs asked the Municipal Statutes Review Committee to provide recommendations on the matter.

IMPLICATIONS FOR THE PRINCIPLES OF DISQUALIFICATION LEGISLATION

When the disqualification provisions were reviewed in 1985, the review committee phrased its report in terms of balancing the private interests of councillors and the public interest. The Committee saw the legislation as providing guidelines to councillors for appropriate behaviour while acting as a councillor.

The rationale behind both the existing Act and the Committee's proposed Act is that municipal elected officials should be disqualified if they do something which jeopardizes the interests of the municipality, fail to carry out the duties of a member of council or put their personal interests ahead of the public interest. In the main, the guidelines apply to a person acting in the capacity of an elected official and refer to situations which relate directly to or affect the ability of an elected official to carry out the duties of public office.

The rules or guidelines also must be clear, reasonable, fair, and must respect the legal rights of the individual. They must also fundamentally maintain the public's trust and confidence in the democratic system.

The Committee believes that these principles underlie the existing legislation respecting both provincial and municipal elected officials in Alberta and in the other provinces in Canada. They are basically accepted throughout Alberta.

The introduction of family violence as a disqualification provision also introduces a new principle. Family violence is a serious problem deserving public concern. However it is highly unlikely that an elected official would be charged with an offence related to family violence in connection with carrying out the duties and responsibilities of public office. This offence relates to the personal life of the councillor and therefore introduces a principle that the personal life of an elected official should conform to community standards.

Previously this type of judgement has been left to the electors when they mark their ballots on election day. **Including family violence offences in legislation as disqualifications would remove that choice from the electors and transfer it to the Legislature and the courts. It would also open the possibility of various other matters in the personal life of elected officials being included in the disqualification provisions.**

The Committee has not been able to identify any legislation in any other province, respecting either provincial or municipal elected officials which deals specifically with a family violence offence. Special Acts have been passed to disqualify members from continued membership in the Legislature in Saskatchewan because of Colin Thatcher's conviction for murder and in Nova Scotia because of Billy Joe MacLean's various convictions.

Alternative suggestions have been made for a "recall provision". This also would be a brand new principle in Alberta municipal legislation. Current legislation is based on the principle that electors exercise their judgement on election day and the persons chosen serve in their elected office until the next election day. The only exception is if the office is vacated through death or resignation or by disqualification of the elected official.

Including a recall provision for persons convicted of family violence offences would open the possibility of various other matters being included as reasons for a recall. This would change the principles on which the term of service in elected office has traditionally been based.

Without judging the merits of either of these types of proposals, the Committee believes that the new principles involved and their implications should be considered and addressed.

A third issue which has not been addressed from a policy perspective in Alberta to the Committee's knowledge is whether the rules for disqualification of a Member of the Legislative Assembly and of a member of the council of a municipality should be the same. Because of the different character and procedures of the two types of government, some rules will obviously be different. However, the question should be considered as to whether there should be any difference in the rules respecting personal activities of the two types of elected officials.

Finally, it should be recognized that there is no "family violence offence" set out in Canadian law. The usual charges would be common assault or aggravated assault under the Criminal Code. The distinction is that the victim of the offence is a member of the family of the elected official.

ALTERNATIVE COURSES OF ACTION

The remainder of this Special Issues Paper reviews six potential alternative courses of action which are presented in random order for consideration and comment by respondents. Narrative accompanies each option which attempts to identify various impacts which may be inherent in its selection.

OPTION 1: NO CHANGE

Under this option, section 29(1)(d) of the Municipal Government Act (118(1)(d) in the proposed Act) would be retained without amendment.

While the specific incident which gave rise to this Special Issue Paper received wide coverage and comment in the Edmonton area, it was almost a non-incident in much of the remainder of the province. The incident is the only one of its nature that the Committee has been able to identify over at least the last 20 years. A change in the Act in 1992 would not have retroactive application to the councillor involved in the incident. A conviction in the absence of imprisonment does not impair the ability of the councillor to attend and participate in meetings of council and its committees.

On the other hand, such a conviction may impair, at least indirectly, the elected official's ability to represent the electors. The councillor may not be perceived as a suitable representative of the electors and the conviction may be perceived as having brought the municipality into disrepute. There would appear to be a body of opinion to the effect that any criminal code conviction, regardless of the sentence involved, should result in disqualification.

OPTION 2: EXEMPT CRIMINAL CODE CONVICTIONS

Under this option section 29(1)(d) of the Municipal Government Act (118(1)(d) of the proposed Act) would be repealed.

Neither the Election Act nor the Legislative Assembly Act make reference to the type of disqualification provided in section 29(1)(d) of the Municipal Government Act. To make the provisions consistent for members of the Legislative Assembly and for members of Municipal Councils, the Municipal Government Act provision could be repealed. This would leave the consequences of a conviction to the decision of the electors at the next election.

This would "narrow" the municipal disqualification provisions at a time when the public is demanding higher standards of conduct from public officials.

OPTION 3: INCLUDE DOMESTIC VIOLENCE

Under this option section 29(1)(d) of the Municipal Government Act (118(1)(d) of the proposed Act) would be amended by adding reference to "conviction of an offence under section 266 of the Criminal Code (Canada) if that offence involves a family member" of the councillor.

This option provides a limited expansion of the disqualification rules and responds to current community standards of acceptable behaviour. The issue of family violence has a high profile and all governments are attempting to respond. Public confidence in a councillor may well be undermined by conviction of a family violence offence particularly when the council is considering various programs or policies related to the issue.

Such a rule, however, disregards the circumstances of the situation and the very real personal tragedy involved. It would expand the focus of disqualification legislation from the behaviour in office to include the personal life of the elected official. The impact of the publicity on family members and in some cases the impact of loss of income from the elected office may be negative for the counselling and rehabilitation process which should follow such incidents. A question may be raised as to why assaulting a family member should result in disqualification but not an assault on a non-family member. There may be other types of offences which have much more direct impact on the ability of the person to carry out the duties of the office, e.g. cheating on an expense account and being convicted of theft under $1000. A question may also be raised as to why other Criminal Code offences do not result in disqualification.

If this option is selected "family member" will have to be defined. The existing description in section 30(2) of the Municipal Government Act, the description proposed in section 113(2) of the new Act or some other description might be used. Respondents selecting this option are invited to provide a definition of the family members to whom the provision should be related.

OPTION 4 INCLUDE OTHER CRIMINAL CODE OFFENCES

Under this option section 29(1)(d) of the Municipal Government Act (118(1)(d) of the proposed Act) would be amended to specify a list of Criminal Code offences punishable by less than five years imprisonment for which conviction would disqualify a councillor.

There may be offences other than those related to family violence which undermine the public confidence in an elected official and at least indirectly affect the ability of the councillor to carry out the duties of public office. Such a list, if kept current, would reflect community standards. Offences which are not deemed to impair the ability of the person to perform in the public office would be excluded from the list.

Development of the list to reflect community standards may not be easily accomplished since there would appear to be no clear basis for distinguishing one Criminal Code offence from another or for determining what the prevailing community standards are. A primary difficulty is that legislation cannot anticipate all the vagaries of human thought which might lead to behaviour considered outside acceptable community standards. There could well be continual requests for amendment of the section to include or exclude specific offences.

Respondents selecting this option are invited to provide a list of disqualifying offences which should be included an amended section 29(1)(d).

OPTION 5: INCLUDE ALL CRIMINAL CODE OFFENCES

Under this option section 29(1)(d) of the Municipal Government Act (118(1)(d) of the proposed Act) would be amended to delete reference to "an indictable offence punishable by imprisonment for 5 or more years" and by substituting "any criminal code offence, whether summary or indictable".

Persons holding elected office must set an example of respect for the law and exhibit law-abiding behaviour at all times, particularly since they are law makers. The public may not distinguish between nor understand the differences between various types of offences or methods of prosecution. This option eliminates the need to develop a list as described in Option 4.

Unlimited reference to criminal code offences may include some offences which in the general public perception may not need to result in disqualification, e.g. mischief or impaired driving. It may also mean that councillor would be prohibited from leading a public demonstration in favour or against some policy proposal of the council because conviction for causing a public disturbance or unlawful assembly would result in disqualification. Or conviction for a behaviour that the public might consider laudable, e.g. contempt of court for refusing to reveal the whereabouts of a child you have reason to believe is being abused in a child custody case, would result in automatic disqualification.

Respondents selecting this option are invited to comment on whether there should be any offences listed which do not result in disqualification.

OPTION 6: RECALL

Under this option the Municipal Government Act (and the proposed Act) would be amended to provide for a petition to recall an elected official convicted of an offence under the Criminal Code during the term of office.

This option would allow the electors to decide, in the circumstances of each situation, whether a councillor convicted of a Criminal Code offence should remain in elected office. It also allows the electors to indicate what acceptable community standards are. Some suggest that this is the most democratic of the options reflecting the grassroots approach which many people are requesting. Since Criminal Code convictions of elected officials are infrequent, the recall provision would not likely be used very often.

Some may suggest that it would be far more important to have a right to recall elected officials whose decisions contradict the wishes of the majority of the electors and therefore there would likely be continual proposals to expand the reasons for a recall. There are no other jurisdictions in Canada with such a provision and therefore there is no Canadian experience on which to draw in preparing such legislation.

Respondents selecting this option are invited to provide specific suggestions on:

a) the reasons for a recall

b) if there is a ward system should electors of the ward or of the entire municipality be eligible to sign the recall petition?

c) the number of electors required to sign the recall petition

d) should the person be able to run in the by-election resulting from a recall? Why or why not?

e) any circumstances other than a Criminal Code conviction for which a recall should be permitted.

IMPLEMENTATION ISSUES

Options 3, 4 & 5 would expand the list of offences for which a councillor could be disqualified. For any of these options consideration must be given to the length of the disqualification. Under the existing Act a disqualification lasts until the next general election at which the person is otherwise eligible to run. This means that having paid the fine or served the sentence and returned to residency in the municipality or having satisfied any other conditions of the sentence, the convicted person could then run in the next general election. Is this considered appropriate? What about a by-election for another

vacancy on the council before the next general election? How long should a person who was disqualified remain ineligible for nomination? What effect would a subsequent pardon have on the length of time you have proposed?

Options 1,3,4 & 5 provide for disqualification upon conviction. Under both the existing and proposed Municipal Government Act, if the councillor did not voluntarily resign, the council or an elector would have to seek an order from the courts declaring the person disqualified and the seat vacant. Is this additional court procedure necessary or should the conviction of a councillor automatically disqualify the person and vacate the seat?

Options 1,3,4,5 & 6 would come into play upon conviction for a Criminal Code offence. Unfortunately the laying of the charge is often tantamount to conviction in the public perception. However legislation must reflect the principle that a person is presumed innocent until proven guilty. This would imply that a person would be eligible for nomination if a general election was held in the time between the laying of the charge and the conviction. The question arises however as to when a disqualification action or recall could be initiated. Would it be upon initial conviction or when all avenues of appeal have been exhausted?

CONCLUSION

In this Special Issue Paper the Committee has attempted to demonstrate the complexity of the question of disqualification related to family violence. The Committee has not yet sought a Constitutional Law review of any of the proposals which will be necessary before any legislative change is made. The proposals will have to be reviewed for conformance with the Charter of Rights. However, before proceeding to that step and subsequently making a recommendation to the Minister, the Committee is seeking the comments, suggestions and advice of the respondents to this paper.

Comments should be submitted **prior to October 15, 1991** to

Municipal Statutes Review Committee
1780 CityCentre
10155 102 Street
Edmonton, Alberta T5J 4L4

Telephone: (403) 427-8861 FAX: (403) 420-1016